



EX PARTE OR LATE FILED

EX PARTE

January 30, 1997

Mr. William F. Caton, Secretary
Federal Communications Commission
1919 M Street NW - Room 222
Washington, D.C. 20554

RECEIVED

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

**RE: Written Ex Parte
CC Docket 96-237**

Dear Mr. Caton:

The purpose of this letter is to inform the Commission that the United States Telephone Association (USTA) and the Rural Telephone Coalition (RTC) have submitted written ex parte presentations today with each of the Commissioners. The purpose of these letters is to briefly outline the positions of USTA and the RTC in the above-referenced rulemaking docket for each of the Commissioners. Attached are copies of the letter addressed to each Commissioner.

In accordance with Section 1.1206(a)(1) of the Commission's rules, USTA is submitting one (1) original and two (2) copies of this notice today. Please include it in the public record of this proceeding.

Sincerely,

A handwritten signature in cursive script, appearing to read "Mary", written over the printed name.

Mary McDermott
Vice President Legal and Regulatory Affairs

No. of Copies rec'd
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January 30, 1997

Chairman Reed E. Hundt
Federal Communications Commission
1919 M Street NW - Room 814
Washington, D.C. 20554

Dear Chairman Hundt:

The deadline for the Commission to implement Section 259 of the Telecommunications Act of 1996 is fast approaching. The United States Telephone Association (USTA) and the Rural Telephone Coalition (RTC)¹ have worked intensively with the Common Carrier Bureau on this matter. Now that the issue is in the Commission's hands, we thought it would be helpful to share our views briefly in this letter.

The concept of infrastructure sharing was originally developed to promote universal service goals by allowing smaller carriers to share or jointly provide infrastructure necessary to provide services comparable to those provided over larger networks. The ever-increasing costs of technological innovation called into question the ability of carriers lacking economies of scale or scope to continue offering comparable services. It was further envisioned as a means to preserve the traditional cooperation found in negotiated arrangements between incumbent LECs for efficiently providing services in each carrier's own service area. Infrastructure sharing legislation was intended to codify that, even with the entry of local competitors, co-carrier relationships among providers of universal service could, and should, continue in order to advance universal service objectives.

USTA and the RTC believe that if Section 259 is to work as envisioned and intended by Congress, the Commission must adopt rules that: 1) recognize the differing but complementary scope and purpose of Section 259 from that of Section 251; 2) provide the maximum amount of

¹ The RTC is comprised of the National Rural Telecom Association (NRTA), the National Telephone Cooperative Association (NTCA), and the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO).

negotiating flexibility and avoid prescriptive regulations; and, 3) affirm the statutory language that infrastructure sharing arrangements cannot be considered as common carriage.

USTA and the RTC strongly believe that the Commission should not attempt to fit the square peg of Section 259 infrastructure sharing arrangements into the round hole of Section 251 interconnection agreements. The previous comments in this proceeding overwhelmingly support the proposition that Sections 251 and 259 of the Act are separate and independent provisions, adopted for differing but complementary purposes. Section 251 is a competitive provision which requires incumbent LECs to provide unbundled network elements under specified common carrier requirements to carriers that plan to provide service in the incumbent LEC's service area. Section 259, as a universal service section, is designed to make network infrastructure capabilities available to qualifying LECs for use within their respective territories.² The Commission should reject any and all proposals to constrain Section 259 negotiations through reference to the provisions of Section 251.

Whether a Section 259 qualifying LEC's request is for a capability that is also available as an unbundled network element under Section 251 is not a relevant consideration in determining whether the requirements of Section 259 are being met. And, where an agreement is negotiated under Section 259, the providing LEC is not obligated to make the same terms and conditions available to parties who submit requests under Section 251. The two sections are distinct. Section 259(b)(3) of the Act provides in clear and unambiguous terms that a providing LEC will not be treated by the Commission or any State as a common carrier for hire or as offering common carrier services with respect to any infrastructure made available. Providing LECs are not, by virtue of Section 259(a), rendered common carriers or subjected to any obligations to replicate precise arrangements for any other carrier.

Infrastructure sharing arrangements should largely be the product of negotiations among parties. Accordingly, USTA and the RTC believe that the Commission should not issue rules establishing cost methodologies or governing the particular prices that must be charged, although the Commission can issue guidelines to the extent needed to clarify the purpose of the "fully benefit" language. USTA and the RTC further believe that the Commission should refrain from adopting prescriptive regulations. Detailed regulations attempting to establish rules for all possible disputes that may later arise are counter-productive and should not be adopted.

² Section 259 does not foreclose a qualifying LEC from competing against the providing LEC. It only provides that the qualifying LEC -- a category not limited to incumbent LECs -- may not use the facilities or functions obtained under Section 259 negotiations to do so. Nor does a providing LEC have any incentive, financial or otherwise, to negotiate an infrastructure sharing arrangement with a qualifying LEC so favorable that competitive LECs may be forestalled from entering the qualifying LEC's territory competitively. Thus, Section 259 does not interfere with the development of local competition.

Should you have any questions concerning the foregoing, please do not hesitate to contact us.

Respectfully submitted jointly,

The United States Telephone Association and The Rural Telephone Coalition

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cc: Commissioner Rachelle B. Chong
Commissioner James H. Quello
Commissioner Susan Ness



January 30, 1997

Commissioner Rachelle B. Chong
Federal Communications Commission
1919 M Street NW - Room 844
Washington, D.C. 20554

Dear Commissioner Chong:

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January 30, 1997

Commissioner James H. Quello
Federal Communications Commission
1919 M Street NW - Room 802
Washington, D.C. 20554

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Federal Communications Commission
1919 M Street NW - Room 832
Washington, D.C. 20554

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